



July 25, 2006

**Lowest Vacancy Rate in 20 Years, but Much More to Do . . .****Status Report on Judicial Nominations**

The 109<sup>th</sup> Congress has had significant successes in terms of evaluating and voting on the President's judicial nominations — most prominently by ensuring fair, up-or-down votes and confirmations for Chief Justice John G. Roberts, Jr., and Justice Samuel A. Alito, Jr. Because many judicial vacancies went unfilled by the President throughout 2005 and early 2006 (due to the Administration's focus on the Supreme Court nominations), the pace of confirmations did slow. But for those nominations that the Senate received, the record is a very good one: the vacancy rate in the federal courts is now just 4.9 percent, lower than it has been in more than 20 years.<sup>1</sup>

To build on this progress, the Senate and President have much work to do. Of the 43 vacancies in the federal court system, 20 have been declared judicial emergencies by the non-partisan Judicial Conference. That means their court dockets are too busy, and that litigants are waiting too long for results. Yet the President has not sent the Senate any nominations for eight of those judicial emergencies. Moreover, while most of the pending judicial nominations were received quite recently, five of the nominees have been waiting more than six months for up-or-down votes on the Senate floor, and some Democrats still threaten filibusters — a tactic widely seen as contrary to longstanding Senate norms for judicial nominations. Such obstruction should not be tolerated. In the coming weeks and months, the Senate should continue to make progress by working to ensure fair, up-or-down votes on all the President's judicial nominees.

**Judicial Nominations by the Numbers**

- **43** — The number of current vacancies on Article III courts — 15 in the courts of appeals, and 28 in the district courts.
- **27** — The number of judicial nominations pending in the Senate, including 11 court of appeals nominees and 16 district court nominees. Three of these nominations have been made to fill vacancies anticipated in the future, but the judgeships are not currently vacant.
- **19** — The number of vacancies for which the President has not submitted a nomination, including 5 vacancies on the courts of appeals and 14 vacancies on the district courts.

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<sup>1</sup> The Congressional Research Service reports that the overall vacancy rate has not been below 5 percent since 1984. In particular, the vacancy rates at comparable points in time (i.e., during the summers before mid-term elections) were 9.2 percent in 2002, 8.7 percent in 1998, 9.4 percent in 1994, 5.9 percent in 1990, and 6.9 percent in 1986. See Congressional Research Service, RL-31635, *Judicial Nominations Statistics, 1977-2003*, Table 1 (updated February 23, 2004).

- **20** — The number of judicial emergencies in the federal court system.<sup>2</sup>
- **51** — The number of judicial nominations confirmed during the 109<sup>th</sup> Congress, including 2 Supreme Court Justices, 13 court of appeals judges, 34 district court judges, and 1 Court of International Trade judge.
- **204** — The number of Article III judges who were confirmed in the 107<sup>th</sup> and 108<sup>th</sup> Congresses, including 35 court of appeals judges, 168 district court judges, and 1 Court of International Trade judge.
- **4.9%** — Overall vacancy rate in the federal courts. (43/871) The vacancy rate for the courts of appeals is 8.4 percent (15/179), and, for the district courts, 4.2 percent (28/674).

## Court-by-Court Summary

### *Supreme Court Nominees*

Nominee	Nomination	Status of Nomination
John G. Roberts, Jr.	9/6/2005	<b>CONFIRMED</b>
Samuel A. Alito, Jr.	11/10/2005	<b>CONFIRMED</b>

### *Court of Appeals Nominees — 11 nominees for 15 vacancies and 1 future vacancy*

Nominee	Court	Original Nomination	Status of Nomination
<i>On Floor</i>			
Terrence Boyle <sup>3</sup>	4 <sup>th</sup> Cir. (judicial emergency)	5/9/01	On Executive Calendar (Reported 6/16/05)
William Myers	9 <sup>th</sup> Cir. (judicial emergency)	5/15/03	On Executive Calendar (Reported 3/17/05)
N. Randy Smith	9 <sup>th</sup> Cir. (judicial emergency)	12/16/05	On Executive Calendar (Reported 5/4/06)
<i>In Committee — Hearing Completed</i>			
William Haynes <sup>4</sup>	4 <sup>th</sup> Cir.	9/29/03	In Committee (2 <sup>nd</sup> hearing 7/11/06; Hearing in 108 <sup>th</sup> )
Kimberly Ann Moore	Federal Circuit	5/18/06	In Committee (Hearing 6/28; on mark-up agenda 7/13/06)
<i>In Committee — Awaiting Hearing</i>			
Michael Wallace	5 <sup>th</sup> Cir. (judicial emergency)	2/8/06	In Committee
Debra Ann Livingston	2 <sup>nd</sup> Cir. (judicial emergency)	6/28/06	In Committee
Kent A. Jordan	3 <sup>rd</sup> Cir. (judicial emergency)	6/28/06	In Committee
Raymond Kethledge	6 <sup>th</sup> Cir. (judicial emergency)	6/28/06	In Committee

<sup>2</sup> The Judicial Conference labels a vacancy a “judicial emergency” when filings have become excessive and/or when the judicial vacancy has existed for at least eighteen months.

<sup>3</sup> Judge Boyle was originally nominated to the 4<sup>th</sup> Circuit on October 22, 1991, but Judiciary Chairman Joe Biden declined to schedule a confirmation hearing for him during the 14 months remaining in that Congress.

<sup>4</sup> Mr. Haynes has been nominated to replace Judge Widener, who has announced that he will serve only until the confirmation of his successor. Thus, this nomination is to fill a “future vacancy.”

<b>Nominee</b>	<b>Court</b>	<b>Original Nomination</b>	<b>Status of Nomination</b>
Stephen Murphy	6 <sup>th</sup> Cir. (judicial emergency)	6/28/06	In Committee
Peter Keisler	D.C. Cir.	6/29/06	In Committee
<i>Vacancies without Presidential Nominations</i>			
(awaiting nominee)	3 <sup>rd</sup> Cir. (judicial emergency)		Vacant since 1/31/06
(awaiting nominee)	3 <sup>rd</sup> Cir. (judicial emergency)		Vacant since 7/9/05
(awaiting nominee)	4 <sup>th</sup> Cir. (judicial emergency)		Vacant since 8/31/00
(awaiting nominee)	4 <sup>th</sup> Cir. (judicial emergency)		Vacant since 5/10/06
(awaiting nominee)	D.C. Cir.		Vacant since 11/3/05
<i>Confirmed Nominations</i>			
Jerome Holmes	10 <sup>th</sup> Cir.	5/4/06	<b>CONFIRMED</b>
Neil Gorsuch	10 <sup>th</sup> Cir.	5/10/06	<b>CONFIRMED</b>
Bobby E. Shepherd	8 <sup>th</sup> Cir.	5/18/06	<b>CONFIRMED</b>
Sandra Ikuta	9 <sup>th</sup> Cir.	2/8/06	<b>CONFIRMED</b>
Brett Kavanaugh	D.C. Cir.	7/25/03	<b>CONFIRMED</b>
Michael A. Chagares	3 <sup>rd</sup> Cir.	1/25/06	<b>CONFIRMED</b>
Priscilla Owen	5 <sup>th</sup> Cir.	5/9/01	<b>CONFIRMED</b>
Richard Griffin	6 <sup>th</sup> Cir.	6/26/02	<b>CONFIRMED</b>
David McKeague	6 <sup>th</sup> Cir.	11/8/01	<b>CONFIRMED</b>
Susan Nielson	6 <sup>th</sup> Cir.	11/8/01	<b>CONFIRMED</b>
Milan Smith	9 <sup>th</sup> Cir.	2/14/06	<b>CONFIRMED</b>
William Pryor	11 <sup>th</sup> Cir.	4/9/03	<b>CONFIRMED</b>
Thomas Griffith	D.C. Cir.	5/10/04	<b>CONFIRMED</b>
Janice Rogers Brown	D.C. Cir.	7/25/03	<b>CONFIRMED</b>

### ***U.S. Court of International Trade***

<b>Nominee</b>	<b>Nomination</b>	<b>Status of Nomination</b>
Leo Maury Gordon	11/10/2005	<b>CONFIRMED</b>

### ***District Court Nominees — 16 nominees for 28 vacancies and 2 future vacancies***

<b>Nominee</b>	<b>Court</b>	<b>Original Nomination</b>	<b>Status of Nomination</b>
<i>On Floor</i>			
(none)			
<i>In Committee — Hearing Completed</i>			
(none)			
<i>In Committee — Awaiting Hearing</i>			
Vanessa L. Bryant	D. Connecticut	1/25/06	In Committee
Philip Gutierrez	C.D. California	4/24/06	In Committee
Valerie Baker	C.D. California	5/4/06	In Committee
Francisco A. Besosa	D. Puerto Rico	5/16/06	In Committee
Marcia M. Howard	M.D. Florida	6/6/06	In Committee
Leslie Southwick	S.D. Mississippi (judicial emergency)	6/6/06	In Committee
Gregory Kent Frizzell	N.D. Oklahoma	6/7/06	In Committee

<b>Nominee</b>	<b>Court</b>	<b>Original Nomination</b>	<b>Status of Nomination</b>
Lisa Godbey Wood	S.D. Georgia	6/12/06	In Committee
John Jarvey <sup>5</sup>	S.D. Iowa	6/28/06	In Committee
Robert James Jonker	W.D. Michigan (judicial emergency)	6/28/06	In Committee
Paul Lewis Maloney	W.D. Michigan (judicial emergency)	6/28/06	In Committee
Janet T. Neff	W.D. Michigan (judicial emergency)	6/28/06	In Committee
Mary Donohue	N.D. New York	6/28/06	In Committee
John Preston Bailey <sup>6</sup>	N.D. West Virginia	6/28/06	In Committee
Sara Elizabeth Lioi	N.D. Ohio	7/14/06	In Committee
Nora Barry Fischer	W.D. Pennsylvania	7/14/06	In Committee
<i>Vacancies without Presidential Nominations</i>			
(awaiting nominee)	C.D. California		Vacant since 12/8/04
(awaiting nominee)	E.D. California (judicial emergency)		Vacant since 5/31/06
(awaiting nominee)	S.D. California		Vacant since 9/14/04
(awaiting nominee)	N.D. Illinois		Vacant since 6/30/06
(awaiting nominee)	E.D. Michigan (judicial emergency)		Vacant since 9/29/00
(awaiting nominee)	S.D. Mississippi (judicial emergency)		Vacant since 3/20/06
(awaiting nominee)	E.D. New York		Vacant since 3/1/06
(awaiting nominee)	E.D. North Carolina		Vacant since 12/31/05
(awaiting nominee)	W.D. North Carolina		Vacant since 12/1/05
(awaiting nominee)	M.D. North Carolina		Vacant since 12/31/05
(awaiting nominee)	M.D. North Carolina		Vacant since 4/3/06
(awaiting nominee)	E.D. Virginia		Vacant since 12/31/05
(awaiting nominee)	E.D. Virginia		Vacant since 5/7/06
(awaiting nominee)	W.D. Wash. (judicial emergency)		Vacant since 3/9/05
<i>Confirmed Nominations</i>			
Daniel Porter Jordan	S.D. Mississippi	4/24/06	<b>CONFIRMED</b>
Gustavo Antonio Gelpi	D. Puerto Rico	4/24/06	<b>CONFIRMED</b>
Michael R. Barrett	S.D. Ohio	12/16/05	<b>CONFIRMED</b>
Timothy C. Batten	N.D. Georgia	9/28/05	<b>CONFIRMED</b>
Joseph F. Bianco	E.D. New York	7/28/05	<b>CONFIRMED</b>
Renee M. Bumb	D. New Jersey	1/25/06	<b>CONFIRMED</b>
Tim Burgess	D. Alaska	7/28/05	<b>CONFIRMED</b>
Brian M. Cogan	E.D. New York	1/25/06	<b>CONFIRMED</b>
Robert Conrad	W.D. North Carolina	4/28/03	<b>CONFIRMED</b>
Sean Cox	E.D. Michigan (judicial emergency)	9/10/04	<b>CONFIRMED</b>
Paul Crotty	S.D. New York	9/7/04	<b>CONFIRMED</b>
Aida Delgado-Colon	D. Puerto Rico	10/25/05	<b>CONFIRMED</b>
Jim Dever	E.D. North Carolina	5/22/02	<b>CONFIRMED</b>
Krisi DuBose	S.D. Alabama	9/28/05	<b>CONFIRMED</b>
Thomas M. Golden	E.D. Penn. (judicial emergency)	1/25/06	<b>CONFIRMED</b>
Andrew J. Guilford	C.D. California	1/25/06	<b>CONFIRMED</b>
Noel L. Hillman	D. New Jersey	1/25/06	<b>CONFIRMED</b>
Thomas E. Johnston	S.D. West Virginia	9/28/05	<b>CONFIRMED</b>
Virginia Kendall	N.D. Illinois	9/28/05	<b>CONFIRMED</b>
Stephen G. Larson	C.D. California	12/15/05	<b>CONFIRMED</b>

<sup>5</sup> Mr. Jarvey will replace Judge Longstaff, who has announced that he will take senior status on November 5, 2006. Therefore, this nomination is to fill a “future vacancy.”

<sup>6</sup> Mr. Bailey will replace Judge Stamp, who has announced that he will take senior status on November 1, 2006. Therefore, this nomination is to fill a “future vacancy.”

<b>Nominee</b>	<b>Court</b>	<b>Original Nomination</b>	<b>Status of Nomination</b>
Thomas Ludington	E.D. Michigan (judicial emergency)	9/12/02	<b>CONFIRMED</b>
Henry Mattice, Jr.	E.D. Tennessee	7/28/05	<b>CONFIRMED</b>
Gray H. Miller	S.D. Texas	1/25/06	<b>CONFIRMED</b>
Brian Sandoval	D. Nevada	3/1/05	<b>CONFIRMED</b>
Patrick J. Schiltz	D. Minnesota	12/14/05	<b>CONFIRMED</b>
J. Michael Seabright	D. Hawaii	9/15/04	<b>CONFIRMED</b>
Peter Sheridan	D. New Jersey (judicial emergency)	11/5/03	<b>CONFIRMED</b>
John Smoak	N.D. Florida	6/8/05	<b>CONFIRMED</b>
Gregory Van Tatenhove	E.D. Kentucky	9/13/05	<b>CONFIRMED</b>
Eric Vitaliano	E.D. New York	10/6/05	<b>CONFIRMED</b>
Keith Watkins	M.D. Alabama	9/28/05	<b>CONFIRMED</b>
Frank Whitney	W.D. North Carolina	2/14/06	<b>CONFIRMED</b>
Susan D. Wigenton	D. New Jersey	1/25/06	<b>CONFIRMED</b>
Jack Zouhary	N.D. Ohio	12/14/05	<b>CONFIRMED</b>

*Compilation by the Senate Republican Policy Committee based on data from the Judicial Conference, the Senate Judiciary Committee, and the Department of Justice Office of Legal Policy.*